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OFFICE OF PETITIONS

In re Application of
Takenouchi et al.
Application No. 10/035,217
Filed: January 4, 2002
Attorney Docket No. Q67010

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ON PETITION

This is a decision on the petition under 37 CFR §§ 1.78(a)(3), filed May 4, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/JP99/05826, filed October 22, 1999).

The petition is **DISMISSED AS MOOT** for the reasons stated below.

The instant petition seeks acceptance of a late claim for priority to a prior-filed PCT national stage application by way of an amendment to the specification, which reads: "This is a Divisional Application of 09/830,167, filed April 23, 2001, the disclosure of which is incorporated herein by reference, which is the National Stage of International Application No. PCT/JP99/05826, filed October 22, 1999."

As set forth in MPEP 1893.03(c), page 1800-199, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate. Accordingly, it is not necessary for the applicant to amend by way of a Certificate of Correction the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371.

In view of the above, the petition under 37 CFR 1.78(a)(3) is dismissed as involving a moot issue.

In view of the dismissal of the instant petition as moot, the \$1330.00 fee submitted therefor is unnecessary and will be credited to petitioner's deposit account as authorized.

Any questions concerning this decision on petition may be directed to Paralegal Liana Chase at (571) 272-3206.

This matter is being referred to the Publishing Division for processing into a patent.

Liana Chase
Petitions Examiner
Office of Petitions